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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,688	08/07/2000	JIMMIE L. JOHNSON	J-135CIP	3622

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DELLETT AND WALTERS  
310 S.W. FOURTH AVENUE  
SUITE 1101  
PORTLAND, OR 97204

EXAMINER
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MACHUGA, JOSEPH S

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/633,688

Applicant(s)

JOHNSON, JIMMIE L.

Examiner

Joseph S. Machuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-20, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plural constituents recited in claim 28 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 9-11, 13-19 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith #2275567 in view of Barasch et al 2764983.

4. Smith discloses a vial used to prepare a fresh medical solution. The vial includes a container (85), separating member (88, 93), an introducer (96,92), a port (94), and a removable cover (98,99,100.) While not explicitly stated, it is considered obvious that the container is meant to be used with a syringe and in a sterile environment given it's intended use of mixing components of a medical solution such as Novocain.

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5. Barasch et al discloses a mixing vial. As illustrated in Figure 8 the vial includes a self-sealing stopper through which a needle can pass and a sterile seal can be maintained. The reference also teaches adding a well to the container to assist in withdrawing all the material from the vial.

6. Given Barasch et al disclosure it would have been obvious to one of ordinary skill in the art to use a self-sealing style stopper in place of diaphragm 94 in Smith's device to provide a reliable seal at this point. To add a well to the container of Smith's would also have been obvious given Barasch et al's teaching of adding this feature to enable a syringe to withdraw the last drop of liquid.

7. Claims 1,2, 8-11, 13, 14, 19, 20, 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Nosik 2721552 in view of Crankshaw et al 4089432.

8. Nosik discloses a multi-chamber container having two sterile seals, an introducer and a syringe-receiving portion. Not disclosed by this reference is the removable cover member. Crankshaw et al discloses a vial having removable protective cover to keep contaminants off the stopper. Given Crankshaw et al's teaching it would have been obvious to one of ordinary skill in the art to add a protective shield to Nosik's stopper (13) to keep contaminants off. Regarding claim 8 and 20 the position of the stopper (13) in Nosik's device would serve as an indicator.

9. Claims 1-5, 8-17, 19, 20 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Smith #2652611 in view of Crankshaw et al 4089432.

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10. Smith discloses a container discloses a container for mixing antibiotics having two seals, introducing member which as illustrated in Figure 5 includes a capsule and a needle port 31'. Not disclosed by this reference is the protective cover. Crankshaw et al discloses a vial having removable protective cover to keep contaminants off a stopper. Given Crankshaw et al's teaching it would have been obvious to one of ordinary skill in the art to add a protective shield over the needle port 31' in Smith's container to keep contaminants off. Regarding claims 8 and 20 the change in shape of the container would serve as an indicator.

11. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nosik in view of Crankshaw as applied to claim 1 above, and further in view of Rovinski 3779371.

12. Rivinski discloses a typical test tube having a tapered bottom portion that forms a well. The design allows the material to collect at the center bottom of the container. To make Nosik's test tube with a tapered bottom would have been obvious to one of ordinary skill in the art given Rivinski's teaching that this design; which allows material to collect a central point, is old and well know in the art.

13. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nosik in view of Crankshaw et al or Smith in view of Barasch et al as applied to claim 1 above, and further in view of Baumann et al #3762540.

Baumann et al discloses a mixer having three material chambers. The ingredients to be mixed are maintained in separate compartments until required. Given Baumann et al's

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disclosure it would have been obvious to one of ordinary skill in the art to add three material compartments to Nosik's device or Smiths device to mix more than two ingredients when it's desirable to do so as for example mixing dental material.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith #2132763 is cited to show a mixer having a dispensing feature similar to a blister pack. Hurst et al 3783089 is cited to show a blister pack. Greenburg 2487236, Hsu 5255812 and Bremer et al 4693711, Larson 3872992, Groves 4798287, Magni 3603469 are cited to show related mixers. Lennon et al and Schwartzman are cited to show removable covers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Machuga whose telephone number is 703-305-6184. The examiner can normally be reached on Monday-Friday; 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D Sykes can be reached on 703-308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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*Joseph S Machuga*  
Joseph S. Machuga  
Examiner  
Art Unit 3762

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July 24, 2003

*Angela D. Sykes*

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